

REMARKS

In response to the Office Action mailed September 24, 2002, Applicant respectfully requests reconsideration. Claims 1-7 and 9-27 are now pending in this application, of which claims 1, 13, 16 and 18 are independent claims. Claims 1 and 13 are amended herein, claim 8 has been cancelled and claims 18-27 have been added. The application as presented is believed to be in allowable condition.

1. Rejection under 35 U.S.C. § 112

The Office Action rejects claim 13 under 35 U.S.C. § 112 and states that the limitation “the bladder” lacks antecedent basis. Applicant has amended claim 13 to now recite “an inflatable bladder.” Claim 13 as amended satisfies the statute and withdrawal of this rejection of claim 13 is respectfully requested.

2. Rejection under 35 U.S.C. § 102

The Office Action rejects claims 1-3 and 5-12 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 1,423,590 to Zimmerman (Zimmerman). Without acceding to the appropriateness or correctness of this rejection, Applicant has amended claim 1 to further distinguish it from Zimmerman. Claim 1, as amended recites “wherein the housing is flexible,” which is not disclosed or suggested by Zimmerman.

Zimmerman discloses a metal fastener. Contrary to the assertion in the Office Action, regarding dependent claim 8, a fastener formed from stamped sheet metal is not inherently flexible. According to the MPEP § 2112, in order to establish that a feature is inherently disclosed in the prior art, it must be clear that “the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. However, what is necessarily present from Zimmerman’s disclosure is that the metal fastener would be rigid rather than flexible. From reading Zimmerman’s disclosure, one of skill in the art would understand that the fastener is rigid. Zimmerman describes the interaction between different portions of his fastener and makes absolutely no mention of any portion being flexible. Therefore, Applicant’s claim 1, as amended, is patentably distinct from Zimmerman. Accordingly, withdrawal of the rejection of claim 1 as being anticipated by Zimmerman is respectfully requested.

Dependent claim 8 has been cancelled and thus the rejection is moot with respect to claim 8.

Dependent claims 2, 3, 5-7 and 9-12 depend, either directly or indirectly, from claim 1 and are therefore allowable for at least the same reasons as claim 1. Accordingly, Applicant does not at this time argue the patentability of each of the dependent claims individually. However, Applicant does not agree that the basis for rejection of any of the dependent claims is proper and specifically reserves the right to discuss the patentability of each dependent claim individually in the future. Withdrawal of the rejection of claims 2, 3, 5-7 and 9-12 is respectfully requested.

3. Rejection under 35 U.S.C. § 103

The Office Action rejects claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Zimmerman in view of U.S. Patent No. 5,855,033 to Frissen (Frissen). Applicant respectfully traverses this rejection.

The Office Action states that Zimmerman discloses all of Applicant's claimed limitations except for the sheet of material comprising a thermoplastic and the flange and the sheet of material being heat sealed together. Applicant respectfully disagrees. As discussed above, Zimmerman does not disclose or suggest that the housing is flexible, as is recited in Applicant's amended claim 1, from which claim 4 depends. Furthermore, Zimmerman does not disclose or suggest that the housing comprises a flange comprising a thermoplastic, as recited in Applicant's claim 4. By contrast, as discussed above, Zimmerman discloses a metal fastener. In addition, at the time of issuance of Zimmerman's patent (1922) thermoplastic material did not exist, and thus could not be disclosed or suggested by Zimmerman.

In addition, Applicant does not agree that the combination of Zimmerman and Frissen is proper. However, assuming arguendo that the combination of Zimmerman and Frissen is proper, Frissen still does not cure the deficiencies of Zimmerman because Frissen does not disclose or suggest a fastener comprising a flexible housing and a flange comprising a thermoplastic. Therefore, for at least these reasons, Applicant's claim 4 patentably distinguishes over the Zimmerman and Frissen, whether taken alone or in combination, and is in condition for allowance. Accordingly, withdrawal of the rejection of claim 4 is respectfully requested.

The Office Action also rejects claims 13-17 under 35 U.S.C. § 103(a) as being unpatentable over Frissen in view of Zimmerman. Without acceding to the appropriateness or

correctness of this combination, Applicant has amended independent claims 13 and 16 to further distinguish them from the asserted combination, and respectfully traverses this rejection.

Applicant's claim 13, as amended, recites a fastener assembly comprising "a housing connected to an inflatable bladder" and "a latch positioned relative to the housing to retain the fastening element within the housing." The Office Action states that it "would have been obvious...to employ a fastening element having a latch...in order to prevent the components from unintentionally becoming disconnected." Applicant respectfully disagrees. First, Frissen discloses that the fastener 29 and coupling agent 31 may be, for example, a button and button hole or Velcro. Frissen provides no other examples or suggestions of other fasteners. There is absolutely no reason or motivation to suppose that either a button/button hole structure or Velcro could benefit from including a latch, and there is no motivation provided by Frissen to so modify the fastener 29 or coupling agent 31. Accordingly, claim 13 patentably distinguishes over the asserted combination of references.

Furthermore, there is no reason to suppose one of ordinary skill in the art would look to Zimmerman for a fastener to use in combination with the beach bed disclosed in Frissen. Frissen provides examples of accepted modern fasteners, and there is no reason or motivation for one of skill in the art to use the old, metal fastener disclosed in Zimmerman. Rather, the Examiner is using impermissible hindsight to seek features of Applicant's claim in different references and combine them to produce Applicant's claimed invention. Properly considering the disclosures of the references, there is nothing that suggests or provides motivation for the asserted combination. Accordingly, the asserted combination is improper, and withdrawal of the rejection of claim 13 is respectfully requested.

Similarly, Applicant's claim 16 recites "a device adapted to contain a fluid comprising...a latch positioned relative to the housing to retain the fastening element within the housing." For the same reasons as discussed above with respect to claim 13, claim 16 patentably distinguishes over the asserted combination and references and the asserted combination of Frissen and Zimmerman is improper. Accordingly, withdrawal of the rejection of claim 16 is respectfully requested.

Claims 14, 15 and 17 depend from one of claims 13 and 16 and are therefore allowable for at least the same reasons as discussed for their respective base claims. Accordingly, withdrawal of the rejection of claims 14, 15 and 17 is respectfully requested.

4. Newly Added Claims

New independent claim 18 has been added to further define Applicant's contribution to the art. Claim 18 recites, *inter alia*, a fastener, comprising "a latch positioned relative to the housing to retain the fastening element within the housing, wherein the latch comprises a protrusion having a portion corresponding to the shape of the fastening element." This limitation is not disclosed or suggested by the art of record, whether taken alone or in combination. Applicant notes that, with reference to claim 11, the Office Action states that Zimmerman discloses a "latch defining a protrusion having a portion corresponding to the shape of the fastening element" in Fig. 11. Applicant respectfully disagrees with this assertion. First, Zimmerman does not have a Fig. 11, and Applicant respectfully requests that the Examiner point out to what element illustrated in Zimmerman's Figs. 1-4 the Examiner is referring. Assuming that the Examiner is considering Zimmerman's flange 10 to be the latch, Applicant points out that flange 10 has no protrusions at all, and particularly does not comprise a "protrusion having a portion corresponding to the shape of the fastening element," as is recited in Applicant's new independent claim 18. Accordingly, claim 18 is believed to be in condition for allowance.

New dependent claims 19-27 depend, either directly or indirectly, from claim 18 are therefore allowable for at least the same reasons as claim 18.

5. Conclusion

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicants' attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,
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MARKED-UP CLAIMS

1. (Amended) A fastener, comprising:
a housing sized and adapted to mate with a fastening element; and
a latch positioned relative to the housing to retain the fastening element within the housing;
wherein the housing is flexible.

13. (Amended) A fastener assembly, comprising:
a fastening element;
a housing connected to [the] an inflatable bladder and sized and adapted to mate with the
fastening element; and
a latch positioned relative to the housing to retain the fastening element within the housing.